(120) AFR

HIGH COURT OF CHHATTISGARH: BILASPUR

Writ Petition (C) No. 3809 of 2004

Petitioner : Jhalaram Kannoje.

Versus

Respondents : State of Chhattisgarh and others

Post for order on 30-7-2007

Sd/-
Satish K. Agnihotri
Judge

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition. No. 3809 of 2004

Petitioner		Jhalaram Kannaoje, S/o Shri Mihali Kannaoje, aged 59 years, Occupation – Service presently posted as Upper Division Teacher in Government High School Gidhpuri, Block & Tahsil Palari, District Raipur (C.G.) R/o. Village Gidhpuri, Block & Tahsil Palari, District Raipur (C.G.)
	Versus	
Respondents	1.	State of Chhattisgarh through Principal Secretary, Department of School Education, Mantralaya, D. K. S. Bhavan, Raipur (C.G.)
	2.	Director, Directorate of Public Instruction, Raipur (C.G.)
	3.	District Education Officer, District Raipur (C.G.)
	4.	Principal, Government High School Gidhpuri, Block & Tahsil Palari, District Raipur (C.G.)

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

(SB : Hon'ble Shri Justice **Satish K. Agnihotri)**

Present :

Shri Rajeev Shrivastava, Advocate for the petitioner.
Shri Satish Gupta, Deputy Government Advocate for the State/ respondents.

ORDER

(Passed on this 30th day of July, 2007)

(1) Heard learned counsel for the parties.

(2) The case of the petitioner is that the petitioner was working as a Upper Division Teacher in the Government High School

Gidhpuri, Tehsil Palari, District Raipur. The date of birth recorded in his service record was wrongly entered as 01.11.1942, whereas the correct date of birth of the petitioner is 01.11.1945. According to learned counsel for the petitioner an application for correction of the date of birth was made on 05.03.2001 (Annexure P-1), on the ground, that the village birth register shows the date of birth of the petitioner on 01.11.1945 (Annexure P-2). The Primary School Certificate and transfer certificate issued by the Principal, Government Primary School, Gidhpuri (Annexure P3) and (Annexure P-4), also show the date of birth of the petitioner as on 01.11.1945. The certificate issued by Kotwar on 15.12.1987 (Annexure P-6), also indicates the date of birth of the petitioner as 01.11.1945. The certificate issued by the Administrator, Village Panchayat, Gidhpuri approves the date of birth of the petitioner as 01.11.1945 (Annexure P-7). Learned counsel fairly submits that the dhakhil kharij register of the middle school, Gidhpuri (Annexure P-9) and school leaving certificate issued by the middle school, Gidhpuri (Annexure P-10), clearly indicate the date of birth of the petitioner as on 01.11.1942. The Higher Secondary School Certificate issued by the Board of Secondary Education, Bhopal indicates the date of birth of the petitioner as 01.11.1942.

(3) Pursuant to the application dated 05.03.2001, the Principal by his letter dated 24.06.2001(Annexure P-14), recommended to the District Education Officer for correction of date of birth on the basis of several contradictory certificates produced by the petitioner but the same was not acted upon. The office of the Accounts Officer in the office of the District Education Officer, Raipur after having considered all the certificates held that the date of birth

entered in the service record as 01.11.1942 was correct and there was no provision to change the date of birth under the provisions of the Fundamental Rules, 1984 (for short 'the FR, 1984').

(4) Being aggrieved and dissatisfied, the petitioner filed a petition, being W.P. No 2051/2004 for correction of date of birth. This Court, vide order dated 16.08.2004 (Annexure P-18), granted liberty to the petitioner to make detailed representation to the concerned authorities and in turn, the concerned authorities were directed to decide the same with reasons, on merit in accordance with law. Pursuant to the representation dated 24.08.2004 (Annexure P-19), the District Education Officer vide order dated 23.09.2004 (Annexure P-20), after having recorded that the date of birth recorded in the service record on the basis of matric certificate is just and proper and the Rules, 84 and 85 under Financial Code Part I, do not provide for change of date of birth under such facts situation.

(5) Being aggrieved and dissatisfied, the petitioner has filed this petition impugning the order dated 23.09.2004 passed by the District Judge and further seeking a direction to the respondents to correct the date of birth of the petitioner in service record as on 01.11.1945 in place of 01.11.1942. Shri Rajeev Shrivastava learned counsel appearing for the petitioner made the above stated submissions and prayed for a writ or direction to quash the impugned order dated 23.09.2004 (Annexure P-20) and for correction of date of birth accordingly.

(6) Shri Satish Gupta, learned Deputy Govt. Advocate appearing for the State/respondents, per contra, would contend that there is no provision for change of date of birth under the FR, 84,

except in case of inconsistency in the date of birth recorded in the service book and the matriculation certificate or typographical error. Learned counsel would further submit that the case of the petitioner is that the entry made in the service record is in consonance with the matriculation certificate and other documents wherein different dates of birth are given, were not the basis for recording the date of birth of the petitioner in the service book. It was further contended that in view of the clear statutory provisions and the entry of the date of birth in the service book of the petitioner on the basis of matriculation certificate is final and conclusive the same could not be altered after retirement of the petitioner, who has retired on 31.10.2004.

(7) On perusal of the pleadings and documents appended thereto, it is evident that the date of birth recorded in the service book is in consonance with the dakhil kharij register of the middle school (Annexure P-9), school leaving certificate after matriculation (Annexure P-10) and marks-sheet issued by the Board of Secondary Education, Bhopal clearly indicate the date of birth of the petitioner as on 01.11.1942. Any entry made prior to matriculation may not be taken as correct as the petitioner subsequently has given the correct date of birth while writing matriculation examination or filling the form for Higher Secondary School Certificate Examination. The date of birth recorded as 01.11.1942 has found place in the service book of the petitioner also, which was filled up on instruction of the petitioner knowing fully well that his date of birth is 01.11.1942. Discovery of certain new documents like birth register, primary school certificate may not be the relevant documents as the date of birth recorded in the Higher Secondary School Examination certificate as well as in the

service book has attained the finality in view of the provision of law, i.e. Rules, 84 and 85 under Financial Code Part I dealing with the date of birth, which reads as under :-

> "84. शासन के अधीन किसी सेवा अथवा पद पर प्रत्येक नवनियुक्त व्यक्ति को भरती के समय अपनी जन्म तिथि की जहाँ तक हो ऐसे अभिलेखों के साथ जो उस तिथि की पुष्टि करते हों जैसे मैट्रीकुलेशन सर्टिफिकेट, म्युनिसिपल जन्म तिथि सर्टिफिकेट, आदि के साथ क्रिश्चियन एरा में, घोषणा करना चाहिए। यदि वास्तविक जन्म तिथि ज्ञात न हो तो लगभग क्या तिथि है यह बताया जाना चाहिए। सेवा–विवरण, सेवा पुस्तिका अथवा अन्य अभिलेख जो शासकीय सेवक के संबंध में रखे जायें उनमें वास्तविक जन्म तिथि अथवा नियम 85 के अंतर्गत निश्चित की गई तिथि अंकित की जाना चाहिए। इस तरह एक बार अंकित की गई जन्म तिथि अन्तिम रूप से नियत तिथि समझी जावेगी और केवल लिपिकीय त्रुटि के मामलों को छोड़कर ऐसी घोषणा में किसी भी प्रयोजन के लिये तदुपरान्त कोई संशोधन मान्य नहीं किया जावेगा।
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> 85. (1) यदि कोई शासकीय सेवक अपनी यथार्थ जन्म तिथि बताने में असमर्थ हो किंतु केवल जन्म का वर्ष अथवा जन्म का वर्ष एवं माह बता सकता हो तो क्रमशः प्रथम जुलाई अथवा माह का सोलहवाँ दिनांक उस शासकीय सेवक की जन्म तिथि मानी जाय।
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> (2) यदि वह केवल अपनी लगभग आयु वर्षों में ही बता सकता हो तो उसकी नियुक्ति के दिनांक से उतने वर्ष घटाकर उसकी जन्मतिथि ज्ञात की जा सकती है।
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> (3) यदि कोई ऐसा व्यक्ति जो पहले सैनिक सेवा में रहा हो तदुपरान्त सिविल सेवा में नियुक्त किया जाता है तो सिविल सेवा हेतु उसकी जन्म तिथि वही होगी जो उसने अभि–प्रमाणीकरण के समय बतलाई हो। ऐसे प्रकरणों में जहां पिछली सैनिक सेवा के अभिलेखों में उसकी यथार्थ जन्म तिथि अंकित नहीं है केवल

अभिप्रमाणीकरण के समय आयु बताई गई थी तो उस आयु के आधार पर उपनियम (2) में बताई गई रीति से उसकी आयु अनुमानित की जाना चाहिए।"

(7) Bare reading of above stated provisions of Rules, 84 and 85 which are clear and unambiguous provides that there cannot be alteration of date of birth, if there is no inconsistency or typographic error in the entry of date of birth made in the service book.

(8) The Supreme Court in the matter of **Union of India Vs. Harnam Singh**[1], clarify the position of law in case of change of date of birth as under :-

> "A Government servant who has declared his age at the initial stage of the employment is, of course, not precluded from making a request later on for correcting his age. It is open to a civil servant to claim correction of his date of birth, if he is in possession of irrefutable proof relating to his date of birth as different from the one earlier recorded and even if there is no period of limitation prescribed for seeking correction of date of birth, the Government servant must do so without any unreasonable delay."

(9) The Supreme Court after having considered the earlier decisions in cases of **Union of India Vs. Harnam Singh** (supra), **State of T.N. Vs. T.V. Venugopalan**[2], **State of Orissa Vs. Ramanath Patnaik**[3], **State of U.P. Vs. Gulaichi**[4], and also in the case of **The Secretary and Commissioner of Home Department and others Vs. R. Kirubakaran**[5] in the case of **State of Gujarat and others Vs. Vali Mohd. Dosabhai Sindhi**[6] observed as under:-

> "If no rule or order has been framed or made, prescribing the period within which such application has to be filed, then such application must be within at least a reasonable time. The

127

> applicant has to produce the evidence in support of such claim, which may amount to irrefutable proof relating to his date of birth. Whenever any such question arises, the onus is on the applicant to prove about the wrong recording of his date of birth in his service book. In many cases it is a part of the strategy on the part of such public servants to approach the court or the tribunal on the eve of their retirement, questioning the correctness of the entries in respect of their dates of birth in the service books".

(10) As a result and for the foregoing reasons and in view of the provisions of Rules, 84 and 85 as quoted above there is no case for correction of date of birth. Thus, this petition is dismissed.

(11) In the facts and circumstances of the case, there shall be no order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Karuna

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1. (1993) 2 SCC 162
2. (1994) 6 SCC 302
3. (1997) 5 SCC 181
4. (2003) 6 SCC 483
5. (1994) Supp.(1) SCC 155
6. (2006) 6 SCC 537